IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

CRL.A.No. 1598 of 2004()

SC.148/2003 of ADDL.SESSIONS COURT (ADHOC), KASARAGOD
CP.154/2001 of JUDL. MAGISTRATE OF FIRST CLASS, KASARAGOD

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APPELLANT:
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1. V.SENTHIL KUMAR, S/O. VASUDEVAN,
CONVICT NO.833, CENTRAL PRISON, KANNUR.

2. JAGDIP KUMAR @ SURESH KUMAR,
CONVICT NO.834, CENTRAL PRISON, KANNUR.

BY ADV. SHAHANA KARTHIKEYAN(STATE BRIEF)

RESPONDENTS:

STATE OF KERALA REPRESENTED BY A
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.NOBLE MATHEW

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

Crl.A.NO.1598 OF 20O4

Dated this the 1st day of November, 2007

JUDGMENT

Koshy, J.

Appellants in this case were convicted and sentenced to undergo rigorous imprisonment for life under Section 302 IPC and rigorous imprisonment for one year under Section 449 IPC and rigorous imprisonment for two years under Section 397 IPC. Allegation against them was that on 27.2.2001 at about 1.05 pm, accused 1 and 2 came to the residence of the deceased Karthiayani Amma and demanded a glass of water for drinking. After ascertaining that there is no other person in the house, first accused entered into the house and forcibly snatched the gold chain from the neck of the said Karthiayani Amma. At that time, second accused gagged her mouth in order to prevent her from making noise. Then as per the direction of first accused, second accused took a knife kept under his socks and plunged into the right side neck of said Karthiayani Amma. Thereafter they fled from the place of occurrence along with a piece of gold chain weighing 4.400 gms and thereby murdered Karthiayani Amma.

2. PW1 gave the first information statement on the same day. The house of PW1 and deceased Karthiayani Amma is only 10 meters apart separated by a compound wall of 4 ½ feet height. According to PW1, after his work, he came for lunch to his house. He heard a sound of scream from the house of deceased Karthiayani Amma and he climbed over the compound wall and jumped to the compound of Karthiayani Amma. PW1 further stated that in his house he and his wife were alone. His wife did not jump over the compound wall. He also deposed that when he heard the sound, he saw something being thrown out from the kitchen side situated on the eastern side and he saw a person walking out of the kitchen. When he asked as to what happened, he did not reply, but showed gestures and PW1 identified second accused Jagdip Kumar as the person who walked out of the kitchen wearing green shirt and green pants. Since he did not give any reply, PW1 came to the southern side of the house to enter inside. According to PW1, the person standing inside, who was identified as first accused, then went out of the kitchen and accused 1 and 2 ran towards north, whom PW1 followed half a furlong. PW1 further stated that touching the house compound of deceased Karthiayani Amma on the northern side, there is a house belonging to Karicheri Narayanan Nair and on further north, there is paddy field. PW1 aslo stated that the accused

persons, who ran through the mud road for some distance then entered the paddy field and started running further north. PW1 chased the accused persons till the house of Narayanan Nair. He informed the incident to the daughter of Narayanan Nair by name, Rathi. She also stated that she had seen two persons running towards north. On hearing the information, PW1 and other people followed them. On coming back to the house of incident, PW1 saw a blood stained knife lying on the road as thrown out from the kitchen. He identified MO1. He immediately went to the police station and informed the matter by about 2.15 pm without any delay. Using his jeep, according to PW1, people gathered went in different directions searching for accused persons. Exhibit P1 FI statement is also to the above version. There is no material contradictions.

3. PW2 is one of the persons who ran after the accused. He identified accused 1 and 2 as the persons who were running through the paddy field. PW2 saw the accused persons first time when they entered the paddy field from the mud road near the house of Narayanan Nair. According to PW2, the accused persons are in a perplexed stage and they were going fast. When PW2 reached the town, daughter of Kelu Nair by name Sathi came and informed the incident in the Fancy Centre belonging to Kelu Nair. PW2 informed the jeep drivers gathered there that if they make an effort without

waisting time, they can catch hold of the accused. According to PW2, three jeeps went in search of the accused in three directions. One of the jeeps went towards Perladukam and other went to Kalladi and the other jeep went towards Karicheri. PW2 went 60 feet towards Karicheri river side, in which one Raghavan was the driver. PW2 deposed that there were others also in the said jeep by name Babu, Sasi etc. When the jeep reached near stone quarry, one of the persons by name Sasi alighted from the jeep for secreting because from the quarry one can see up to Karicheri river. According to PW2, when they were proceeding towards banks of the river one Thampan and Gireesh were seen questioning the two persons whom PW2 had seen a little earlier. Dissatisfied with the answers given by them, the accused persons were taken in the jeep to Perladukam town by about 2.30 pm. PW2 further stated that PW1 Kunhambu Nair reached the town when the accused persons were brought there.

4. PW3 Gireesh is the person who questioned the accused persons from the river side when PW2 and party reached the banks of the river. According to PW3, he along with Thampan were proceeding to get bus to Kasaragod at about 2 pm. When they reached the other side of Karichery river, they could see two persons unfamiliar to them, walking in haste. PW3 further stated that Divakaran and Sasi were shouting from the other side of the river to

catch hold of the persons walking in front of them. According to PW3, those persons were not walking in the usual pathway used by the public to reach the bus stop and PW3 and Thampan blocked them and questioned by which time Divakaran and Chandran Panicker reached the spot. PW3 stated that PW2 Chandran Panicker also confirmed that they were the persons to whom he also had seen running a little earlier. PW4 is a taxi jeep driver, who went along with PW2 and others in search of the accused persons towards Karicheri river side. PW4 also stated that PW2 confirmed the accused persons as the persons who were seen running a little earlier. PW5 is only an attester to Exhibit P2 inquest report. MO2 to MO8 were seized from the body of the deceased. MO7 is the gold chain piece. PW6 is an attester to Exhibit P3 scene mahazar. From the scene mahazar, it is seen that spectacle which is stained with blood, marked as MO9, a blood soiled sack, MO1 knife etc. were recovered. PW7 is an attester to Exhibit P4 seizure mahazar, as per which MO11 to MO20 were recovered while searching the body of the accused persons. MO11 to MO20 are as follows:

MO11	--------	Shirt (green)
MO12	--------	Pants (green)
MO13	--------	Scissors (from A2)
MO14	--------	Kerchief (from A2)

MO15	--------	Piece of gold chain (from A2)
MO16	--------	Shirt (Check)
MO17	--------	Pants (grey)
MO18	--------	Folding knife
MO19	--------	Cotton towel
MO20	--------	Glass cutter(from A1)

PW8 is the son of deceased Karthiayani Amma. He stated that he saw his mother alive by about 7.45 in the morning when he went for job. On the date of incident, his sister had gone to the house of a relative. In the house, his mother, his elder brother and his wife and uncle are staying. On day time only sister-in-law and mother will be there and on the date of incident, sister-in-law went to the house of a relative. Mother used to wear gold chain weighing 1 ½ sovereign. PW8 identified MO15 recovered from the pocket of the accused as well as MO7 piece of gold chain recovered from the dead body as part of the same gold chain. PW8 also identified the ear ornaments worn by his mother as MO5. Similarly, PW8 identified MO6 series as the two rolled gold bangles worn by his mother and these are the items seen by him daily worn by his mother. Chemical examination report (Exhibit P8) would show that human blood was detected in item Nos. 1 to 8, 12and 16 to 20. It was also stated that 'O' group blood stains found on the shirts (item Nos. 3, 12 and 16), pants

(item No.8), skirt (item No.3), gold chain (item No.17) and bangles (item No.19). Pw11 conducted the postmortem and issued Exhibit P7 postmortem certificate. The following antemortem injuries were noticed in Exhibit P7:

> "1. An incised wound with regular margins placed transversely on the Rt side of neck. Measurements - 4 c.m in length, 9 c.m deep, 1 c.m in width, cutting sigulan vein, External carotid artary, and internal carotid artery, reaching deep to the cervical vertbrae Ploting of blood slots are seen inside this wound.
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> (2) Incised wound with regular margins placed almost transversly placed about 3 ½'' below the Rt ear. Measurements 2 ½ cm in length, ½ cm width and 3 cm deep cutting stain and muscles.
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> 3. An incised wound placed on the lefet side of neck about 2 inches below the lower jaw
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> (4) Three small incised wounds in front of left shoulder joint. No other injuries."

5. PW11 in his evidence deposed that injury Nos. 1 to 3 can be caused by a knife like MO1. Injury No.1 alone is sufficient to cause death.

6. The evidence in this case shows that at the time of incident, the deceased was alone in the house at about 1.05 pm. PW1 neighbour of the deceased, who came after his work for lunch, heard hue and cry from the house of deceased and saw a person walking out of the kitchen of the house of deceased. He also gone inside. He

also saw first accused going out. He followed them and people gathered, including PW2 and by the time accused 1 and 2 ran away. The people gathered, searched under several groups in jeeps and finally PW2 etc. were able to see the accused and they were caught by PW3 and others. PW1 identified them as the person who ran away from the house of the deceased. Shirts worn by accused 1 and 2 as well as skirt of the deceased contained human blood of 'O' group. PW1 informed the police station and police immediately came to the place. Accused 1 and 2 were caught hold by the local people and their shirts, pants etc. seized also contained blood. From the body of second accused, a part of the gold chain was also found out. Other part of the gold chain was found from the body of the deceased. The gold chain which was found from the pocket of the accused also was blood stained. The knife which was thrown out and identified by PW1 also contained human blood of 'O' group. It is true that there were some injuries on the head of the first accused. But the accused has no case that his blood group is 'O' positive. In any event, he has no explanation how the injury occurred to his head. According to 313 statement, the local people caught hold them thinking that they are pickpocketers. But, a part of the chain of the deceased was found in the pocket of second accused and weapons used for house breaking were found at the time of catching them by

the local people. Blood stain found in their pocket was not explained. The medical evidence also supports the case of the prosecution.

7. Considering the totality of the evidence, we are of the view that the prosecution was able to prove that they came to the house of the deceased for committing theft and snatched away a part of the gold bangle owned by her. But, since she resisted, in that process they murdered the deceased. But PW1 saw the accused and the local people was able to catch hold them and immediately PW1 reported the matter to the police without any delay. There is not even a suggestion that any of the prosecution witnesses were inimical to the accused. It is clear from the evidence that the accused are guilty of the charges found against them by the trial court. In the above circumstances, we see no reason to interfere with the conviction and sentence passed by the trial court. The appeal is dismissed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

Crl.A.NO.1598 OF 2004

JUDGMENT

1.11.2007